

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**CASE NO. A-6529**

**PETITION OF PATRICK CALLIS**

**OPINION OF THE BOARD  
(Opinion Adopted July 26, 2017)  
(Effective Date of Opinion: August 8, 2017)**

Case No. A-6529 is an application for a variance needed to allow construction of a proposed garage addition. The proposed structure requires a variance of three (3) feet as it is within five (5) feet of the side lot line. The required setback is eight (8) feet, in accordance with Section 59-4.4.8.B.2 of the Montgomery County Zoning Ordinance.

The Board held a hearing on the application on July 26, 2017. Petitioner Patrick Callis and his wife Kimberly Callis appeared at the hearing with their architect, Brian McCarthy.

Decision of the Board:                      Variance **GRANTED**.

**EVIDENCE PRESENTED**

1.     The subject property is Lot 1, Block EYE, Stratton Woods Subdivision located at 6814 Greyswood Road, Bethesda, MD, 20817, in the R-90 Zone.
2.     The subject property is a five-sided corner lot with frontage on Greyswood Road and Derbyshire Lane. The side lot line on the western side of the property is slightly arced to accommodate radio towers formerly used on the abutting property. See Exhibits 4(a) and 7(a). Per SDAT, the Petitioner has owned this property since 2011.
3.     The Petitioner's architect, in his letter of October 31, 2016, submitted in connection with this variance application ("Statement"), notes that although the subject property is larger than most of the surrounding properties, the buildable envelope created by the application of the setbacks to the subject property is much smaller than that of the

surrounding properties, both in terms of square footage and as a percentage of the lot as a whole:

Several features make the site somewhat unusual. The corner lot location significantly reduces the buildable area on the lot by imposing a 30' setback on two of the four sides of the lot. The seven adjacent houses in the immediate area that have been selected for comparison share the frontage on Derbyshire Lane and border on a forest conservation area. The average lot size of this group of eight lots is 9,800 square feet (ranging from 9,158 square feet to 11,212 square feet). The average buildable area on these lots, as determined by setbacks, is 3,597 square feet.

In contrast, the subject property is 10,734 square feet, 934 square feet larger than the average lot in this group, yet has 580 square feet less buildable area. The buildable area of the subject property is 3,017 square feet, only 28% of the total lot area, compared to an average buildable area of 3,626 square feet, 37% of the total lot area for the eight lots in the comparison group.

Note that the average buildable lot area of 38% held true when the subject area for comparison was expanded to 27 contiguous neighborhood lots.

The shape of the lot combined with the location of the existing house renders much of the remaining buildable area impossible to achieve what the Owners desire, a two-car garage, to replace an existing one-space carport. The subject property is trapezoidal in proportion, with the existing house out of parallel with four of the five property lines. The houses on the typical interior lots are sited parallel to the property lines creating more practical building area on all sides.

See Exhibit 3. The calculations which support these assertions were submitted with the variance application. See Exhibit 7(b). The Petitioner's architect followed up on this at the hearing, testifying that the subject property was the seventh largest of the surrounding 27 properties, but had the third smallest buildable envelope.

4. The Statement notes that without the grant of this variance, the width of the garage would be limited to 17 feet. It states that the grant of the requested three foot variance would allow for a "minimally adequate two-car garage to be built," noting that "[b]ecause of the non-parallel setbacks, only about 21 square feet of the proposed garage would project into the existing 8-foot setback." See Exhibit 3.

5. Per the Statement, the proposed garage addition is configured to have "virtually no impact on neighboring properties" and "has been designed to be sensitive to the massing, materials and architectural character of the neighborhood...." In addition, the proposed addition "does not increase the height of the existing house," and is "adjacent

to an existing forest conservation strip, which borders the rear yards of the entire seven house comparison group." See Exhibit 3.

6. At the hearing, the Petitioner's architect testified that the subject property backs to the WMAL radio tower site, and that the house was built in the 1960s. He presented exhibits which illustrated the constraints placed on the buildable envelope of the subject property, both when viewed alone, and when compared with neighboring properties. He testified that 72% of the subject property is not developable, that the existing house occupies approximately 13% of the site, that the proposed addition would increase this by about 5%, and that the encroachment would only be 0.2%. He testified that the proposed encroachment is de minimis, and that any other location would have a greater impact on neighboring properties.

7. The Petitioner testified that his hardship is having a corner lot with an irregular property line that was set for the radius from an existing radio tower. He testified that if that property line were straight, he would not need a variance for the proposed construction. The Petitioner further testified that the total area of the encroachment is 21 square feet, and that if the garage were located on the other side of his property, a greater variance would be needed.

## CONCLUSIONS OF LAW

Based on the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E, as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59-7.3.2.E.2.a.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

Based on the Statement and Exhibit 7(b), the Board finds that the subject property has a markedly small buildable envelope compared to neighboring properties, both in terms of square footage and when viewed as a percentage of the lot as a whole. See Exhibits 3 and 7(b). The Board finds that this unusually constrained buildable area constitutes an extraordinary condition that is peculiar to this property. See Exhibit 4(b). In addition, the Board finds that the subject property has an arced side lot line because of the abutting radio tower property. See Exhibit 7(a).

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

Based on the SDAT information, the Board finds that the Petitioner purchased this property in 2011, and is not responsible for the subdivision or shape of this lot, including its arced side lot line, or the resultant constraints on the buildable area.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

Per the Statement and the testimony of the Petitioner, the Board finds that the grant of this variance will allow approximately 21 square feet of the proposed garage to be located in the side setback, and that if the side lot line were not arced, no variance would be needed. The Board further finds that the grant of this variance is the minimum necessary to allow construction of a garage of adequate width to house two cars, and is the minimum necessary to overcome the practical difficulties posed by full compliance with the Zoning Ordinance, which causes the subject property to have a buildable envelope that is 580 square feet smaller than the average of the adjacent houses. See Exhibits 3 and 7(b).

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that allowing the Petitioner to construct this addition continues the residential use of this property and is consistent with the applicable master plan.

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that the proposed addition will not be adverse to the use and enjoyment of abutting or confronting properties. In support of the finding, the Board notes the assertions made in the Statement that the proposed garage addition is configured to have "virtually no impact on neighboring properties," that it "has been designed to be sensitive to the massing, materials and architectural character of the neighborhood," that it "does not increase the height of the existing house," and that it is "adjacent to an existing forest conservation strip." See Exhibit 3.

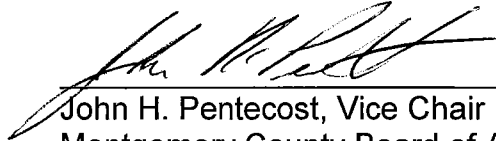
Accordingly, the requested three (3) foot variance from the side lot line setback is **granted**, subject to the following conditions:

1. Petitioner shall be bound by his testimony and exhibits of record, and by the testimony of his architect; and

2. Construction shall be in accordance with Exhibits 4 and 5 (inclusive).

Therefore, based upon the foregoing, on a motion by Stanley B. Boyd, seconded by Edwin S. Rosado, with John H. Pentecost, Vice Chair, and Bruce Goldensohn in agreement, and with Carolyn J. Shawaker, Chair, necessarily absent, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

  
John H. Pentecost, Vice Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 8th day of August, 2017.

  
Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.